

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18132
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On April 30, 2004, the Field Services Bureau (FSB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted], [Redacted], proposing use tax, penalty, and interest for July 2002 in the total amount of \$1,232.56.

On June 22, 2004, a timely protest and petition for redetermination was filed by the petitioners[Redacted] A hearing was requested by the petitioners and held on September 28, 2004 in the Boise office. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the NOD.

FSB imposed use tax on a 2002 [Redacted] (motor vehicle) owned by the petitioners. The motor vehicle was purchased in Alaska on July 6, 2002. The state of [Redacted] does not have a general sales tax. The petitioners purchased a home in [Redacted] in August 2002 and moved there in early September 2002. The petitioners became Idaho residents when they moved to Idaho. They brought the motor vehicle with them to Idaho. The petitioners filed an Idaho part-year resident individual income tax return for the year 2002. On their 2002 return, taxpayers indicated they were in Idaho for four full months.

An NOD was issued to the petitioners on April 30, 2004, assessing use tax on the motor vehicle in question based on the value of the motor vehicle when it was first brought to Idaho. Interest in the NOD was calculated from the date the motor vehicle was purchased. Interest should have been calculated from the date the motor vehicle first entered Idaho. The NOD will be modified

to reflect this change.

The petitioners brought a written statement to their hearing that included the following reasons why they disagree with the use tax imposed in the NOD:

As lay persons, we are under the belief that this rule has holes in it that one could drive trucks through.

1. The presumption of guilt. We always believed in the presumption of innocence.
2. The rule violates the Commerce Clause of the U.S. Constitution in that it penalizes the free movement of people or commerce between the States.
3. Residency Rules. To obtain resident fish and game licenses one must be a resident for more than six months in Idaho. To vote, one must be a resident for more than 90 days. For vehicle sales tax purposes, one is forced under some circumstances to become a resident 3 months before coming to Idaho! This may be lawful, but not morally fair!

Idaho imposes a tax on storage, use or other consumption of tangible personal property brought into the state and a recent sales price shall be presumptive evidence of the value of the property. Idaho Code § 63-3621. The use tax is complementary to the sales tax, which imposes tax on the retail sale of tangible personal property within Idaho. It is uncontroverted that the motor vehicle was brought into Idaho and, absent an exemption, the petitioners owe a use tax. However, Idaho Code § 63-3621(l) provides:

- (l) The use tax herein imposed shall not apply to the use of household goods, personal effects and personally owned motor vehicles by a resident of this state, if such articles were acquired by such person in another state while a resident of that state and primarily for use outside this state and if such use was actual and substantial, but if an article was acquired less than three (3) months prior to the time he entered this state, it will be presumed that the article was acquired for use in this state and that its use outside this state was not actual and substantial. For purposes of this subsection,

"resident" shall be as defined in section 63-3013 or 63-3013A, Idaho Code. (Emphasis added)

It is clear the motor vehicle was acquired less than three months prior to the time the petitioners became residents of Idaho. The relevant definition of resident for Idaho Code section 63-3621(l) can be found in Idaho Code section 63-3013A which stated:

63-3013A. Part-year resident. -- The term "part-year resident," for income tax purposes, means any individual who is not a resident and who:

(a) Has changed his domicile from Idaho or to Idaho during the taxable year; or

(b) Has resided in Idaho for more than one (1) day during the taxable year. An individual shall be deemed to reside within Idaho for any calendar day in which that individual has a place of abode in this state and is present in this state for more than a temporary or transitory purpose. Presence for any fraction of a calendar day shall be counted as a whole day.

The petitioners did not own the vehicle for at least three months before becoming Idaho residents; therefore, they did not qualify for the new resident exemption.

The petitioners claim that Idaho's use tax law violates the Commerce Clause of the U.S. Constitution. Interpreting a similar statute, the Supreme Court of the United States held that a contractor working in the state of [Redacted][Redacted] who had purchased machinery in other states and brought the machinery to [Redacted] owed use tax on its use of the tangible personal property within the state. *Henneford v. Silas Mason Co., Inc.*, 300 U.S., 577, 582 (1937).

The petitioners' last argument discusses the fairness of how long a person must be a resident of Idaho before certain privileges are granted, such as the right to vote. The petitioners try to claim that Idaho sales and use tax laws require them to be residents for three months before coming to Idaho. This statement is not correct. Idaho can only impose its use tax on the motor vehicle after it has been brought to this state. The legislature has the right to impose use tax on all of the motor vehicles the petitioners brought to Idaho. Instead, the exemption from use tax granted by the

legislature only requires the petitioners to pay use tax on the motor vehicle in question.

Based on all the facts cited previously in this decision, the petitioners did not qualify for any exemption from use tax on the motor vehicle and are required to pay use tax on that motor vehicle.

WHEREFORE, the Notice of Deficiency Determination dated April 30, 2004, as MODIFIED, is hereby APPROVED, AFFIRMED AND MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that the petitioners pay the following tax, penalty, and interest:

<u>PERIOD</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
9/2002	\$916.25	\$229.06	\$124.53	\$1,269.84

Interest is computed through March 17, 2005.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioners' right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2004, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt
